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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HWANG, VICTOR KENNY

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 03/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	09/945,026	Applicant(s)	KEISER, DENNIS L. <i>CH</i>
Examiner	Victor K. Hwang	Art Unit	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 31 August 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-46 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-9, 14-22, 24 and 25 is/are rejected.

7) Claim(s) 10-13, 23 and 26-46 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 31 August 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other:

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the pneumatic system individually operably connected to the carriage and the arms of the pair of arms selectively operable to move the carriage to a selected position along the first path of travel must be shown or the feature(s) cancelled from the claim(s). The drawings currently show the carriage 140 and the arms 190 of the pair of arms selectively positioned along the first path of travel 121 by a motor 233, mounted to the frame, turning a threaded shaft 234 engaged to a drive bushing 241 which is connected to the carriage assembly. No new matter should be entered.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: "99" in Fig. 4. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification does not describe the carriage selectively positioned along the path of travel defined by the track by means of a pneumatic system operably

connected to the carriage to support recited limitations in section E of claim 25 and in claim 26.

4. The disclosure is objected to because of the following informalities:
 - on page 4, line 2, "perimeters" presumably should be corrected to ---parameters---;
 - on page 13, line 15, "bulk head" presumably should be corrected to ---bulkhead---;
 - on page 21, line 4, "212" presumably should be corrected to ---Stop 212---;
 - on page 21, line 15, "213" presumably should be corrected to ---215---;
 - on page 24, line 15, "is" presumably should be deleted;
 - on line 3 of the preliminary amendment to page 24, line 15, "number" presumably should be corrected to ---member---;
 - and on page 26, line 1, "320" presumably should be corrected to ---330---.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claims 2-13, 18-24 and 27-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, the recitation "said operator" on line 3 positively recites the operator as a part of the invention. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claim is indefinite.

In claim 5, the recitation "said operator" on line 2 positively recites the operator as a part of the invention. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claim is indefinite.

In claim 7, the recitation "substantially coincident with the shoulders of said operator" on line 2 sets forth recitations describing the elements of the invention with respect to a particular user. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claim is indefinite.

In claim 8, the recitation "said operator" on line 5 positively recites the operator as a part of the invention. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claim is indefinite.

In claim 9, the recitation "said operator" on line 2 positively recites the operator as a part of the invention. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claim is indefinite. Additionally, the recitation "the attitude of said exercising" on line 3 lacks antecedent basis.

In claim 11, the recitation "said controlling means" on line 3 lacks positive antecedent basis. The claim has been examined presuming that "said controlling means" refers to the "control system" of claim 10.

In claim 13, the recitation "capable of" on line 2 is indefinite since it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

In claim 18, the recitations "said first reference position" on line 2 and "said first... engagement..." assembly on lines 6-7 lack positive antecedent basis.

In claim 23, the recitation "said hands of the operator" on line 3 positively recites the operator as a part of the invention. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claim is indefinite.

Claims 3, 4 , 6, 10, 12, 19-22 and 24 depend from claims 2, 5, 9, 11 or 18 and are likewise indefinite.

In claim 27, the recitation "said upper end of the operator's station substantially concentric to the shoulders of the operator in said supine attitude" on lines 2-3 sets forth recitations describing the elements of the invention with respect to a particular user. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claim is indefinite.

In claim 28, the recitation "a pivot axis substantially right-angularly related to the operator's station" on lines 4-5 is indefinite since it has not been established what portion of the operator's station the pivot axis is to be right-angularly related to, i.e. a longitudinal axis of the operator's station.

In claim 34, the recitation "said operator" on line 2 positively recites the operator as a part of the invention. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claim is indefinite.

In claim 35, the recitation "said operator" on line 4 positively recites the operator as a part of the invention. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claim is indefinite. Additionally, the recitation of "an arm" on line 3 to which the electrical display assembly is mounted is indefinite since "arm" is previously used to identify structure pivotally mounted to the carriage. It is suggested that another descriptive recitation be used to identify the arm of line 3, such as display arm member or arm member.

In claims 38, 40 and 41, the recitation "said operator" on line 5 positively recites the operator as a part of the invention. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claim is indefinite.

In claims 39 and 42 the recitation "said operator" on line 2 positively recites the operator as a part of the invention. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claim is indefinite.

In claims 43-45, the recitations "the length of said operator's body" and "the thickness of the operator's body" set forth recitations describing the elements of the invention with

respect to a particular user. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claims are indefinite.

Claims 29-33, 36, 37, 42 and 45 depend from claims 28, 35 or 40 and are likewise indefinite.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5, 8, 14, 18 and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Szabo et al.* (US Pat. 4,976,426). *Szabo et al.* disclose an exercise device, Fig. 4, comprising a frame 10 having a contact surface 12,14 defining an operator's station adapted to receive an operator 44 in a supine attitude with the operator's upper body adjacent to a first end thereof and the operator's lower body adjacent to an opposite second end thereof; a track 40 mounted on the frame adjacent to the first end thereof defining a first path of travel substantially aligned and offset relative to the first end of the operator's station; a carriage 20 borne by the track for movement along the first path of travel; a first engagement assembly including a pair of arms 32 mounted on the carriage for movement along a second path of travel for use in exercising. The carriage 20 is selectively positioned along the track 40 by

means of an hydraulic pump 54, col. 4, lines 55-61, to vary the exercise of the operator. A hydraulic pump and motor 52 (pressurized vessel) provides resistance to movement of the engagement assembly along the second path of travel via a shaft linkage 50.

The embodiment of the device also includes a second reference position spaced from the first reference position, a second engagement assembly mounted for movement along a path of travel relative to the second reference position and second means for resisting movement of the second engagement assembly along a path of travel thereof. The first engagement assembly is adapted for contact by the hands of the operator and the second engagement assembly is adapted for contact by the feet of the operator whereby the operator simultaneously and independently exercises the upper and lower body. Both assemblies travel along separate rails so as to be individually movable relative to the frame along the length of the operator's station. Each assembly houses an hydraulic pump and motor 52 to provide resistance to movement of the assemblies along the second paths of travel. A display 16 and keyboard 18 provide a means to monitor and control the exercise device.

8. Claims 1, 14 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Brentham* (US Pat. 4,247,098). *Brentham'098* discloses an exercise apparatus comprising a frame 12 having a predetermined reference position, an engagement assembly 52,54 for use by an operator during exercise and resisting means 18 for resisting movement of the engagement assembly by the operator during exercise. The engagement assembly is mounted for movement along a "second" path of travel wherein the resisting means 18 is operably connected to the engagement assembly through a linkage 94, Fig. 6, selectively operable to

change the resistance applied to the engagement assembly during movement along the second path of travel. The resisting means includes a pressurized vessel 118 having a pressure member 112 therein from which a linking member 108 is extended and which is operatively connected to the engagement assembly and wherein the linkage operatively interconnects the linking member and the engagement assembly so as to be movable between a first position to resist movement in a first pattern and a second position to resist movement in a second pattern.

9. Claims 1, 2, 5-9, 14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by *Piane, Jr. et al.* (US 5,102,122). *Piane, Jr. et al.* discloses an exercise apparatus, Fig. 6, having a pair of engagement assemblies 30 carried by carriages 18 mounted for selective movement along arcuate tracks 17. Resistance to exercise movement of the engagement assemblies 30 is provided by weight stacks 32 operably connected by a linkage of cable and pulley assemblies. The weight stack resistance 32 is selectively operable to change the resistance applied to the engagement assemblies 30 during exercise movement. Other resistance sources may be used, such as pneumatic or hydraulic cylinders, electronic brakes or stepper motors, col. 3, lines 45-48. An operator of the apparatus positions themselves on the base 106 and may simultaneously contact each engagement assembly 30 for use in exercising both arms or both legs or one of each, col. 5, lines 33-35.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 20, 21 and 24 are rejected under 35 U.S.C. § 103 as being unpatentable over *Szabo et al.* (US Pat. 4,976,426) in view of *Brentham* (US Pat. 4,609,190). *Szabo et al.* has been discussed above, and such discussion is incorporated herein, discloses the invention as claimed except for at least one restraint borne by the frame for attachment to the operator. *Brentham'190* discloses an exercise apparatus including a seat belt which restrains the body of the operator to provide stability, col. 8, lines 18-21. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of *Szabo et al.* with the restraints of *Brentham'190*, in order to stabilize the operator's body and prevent undesirable movement of the operator's body along the operator's station.

12. Claim 22 is rejected under 35 U.S.C. § 103 as being unpatentable over *Szabo et al.* (US Pat. 4,976,426) in view of *Brentham* (US Pat. 4,609,190) as applied to claim 20 above, and further in view of *Olschansky et al.* (US Pat. 5,145,479). *Szabo et al.* in view of *Brentham'190* discloses the invention as claimed except for the first and second resisting means being pneumatic systems. *Olschansky et al.* disclose an exercise apparatus for exercising upper and lower body and includes a frictional resistance means. *Olschansky et al.* also teaches that hydraulic, pneumatic or electromotive systems may be substituted to provide the necessary resistance. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the hydraulic system of *Szabo et al.* in view of

Brentham'190 with a pneumatic system as suggested by *Olschansky et al.*, in order to provide a system which does not have the potential to leak surface damaging fluids.

13. Claim 25 is rejected under 35 U.S.C. § 103 as being unpatentable over *Lighter* (US Pat. 4,911,436) in view of *Jones* (US Pat. 5,044,632), *Szabo et al.* (US Pat. 4,976,426) and *Olschansky et al.* (US Pat. 5,145,479). *Lighter* discloses an exercise apparatus comprising a frame 12 having a contact surface 54 defining an operator's station adapted to receive an operator in a supine attitude with the operator's upper body adjacent to a first end thereof and the operator's lower body adjacent to an opposite second end thereof; a track 16 mounted on the frame 12 adjacent to the first end thereof defining a first path of travel substantially aligned and offset relative to the first end of the operator's station; a carriage 22 borne by the track 16 for movement along the first path of travel; an arm 28 mounted on the carriage 22 for substantially pivotal movement along a pivot axis 40 substantially right-angularly related to the first path of travel; and a pneumatic system 36 operably connected to the carriage 22 and the arm 28 to resist the substantially pivotal movement of the arm 28 about the pivot axis 40.

Lighter does not disclose a second arm mounted to the carriage for individual substantially pivotal movement along the pivot axis 40 and a pneumatic system selectively operable to move the carriage to a selected position along the first path of travel. *Jones* discloses an exercise apparatus comprising a pair of arms mounted for individual substantially pivotal movement about respective pivot axis. *Jones* also teaches that his apparatus provides increased versatility by exercising one arm at a time, col. 3, lines 29-31. *Jones* is able to provide this increased versatility by using two pivoting arms. It would have been obvious to

one having ordinary skill in the art at the time the invention was made to provide the apparatus of *Lighter* with a second arm pivotally mounted to the carriage, since *Jones* teaches that increased versatility is provided by having a second pivot arm to exercise one arm of the operator at a time.

Lighter in view of *Jones* does not disclose a pneumatic system selectively operable to move the carriage to a selected position along the first path of travel. *Szabo et al.* and *Olschansky et al.* have been discussed above, and such discussion is incorporated herein. *Szabo et al.* discloses an exercise apparatus having a carriage selectively positioned along a track by means of an hydraulic system. *Olschansky et al.* discloses the equivalence of hydraulic and pneumatic systems. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the carriage of *Lighter* in view of *Jones* with the positioning means of *Szabo et al.* using a pneumatic system as suggested by *Olschansky et al.*, in order to allow for ease of selective positioning of the carriage along the track for exercising through a range of exercising movements.

Allowable Subject Matter

14. Claims 10-13, 23 and 26-46 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

15. This is a continuation of applicant's earlier Application No. 09/069,057, which is a continuation of Application No. 08/405,494. Applicant's representative contacted the Examiner in the Fall of 2002 and indicated that a preliminary amendment was forthcoming. Subsequent contact has not led to filing of a preliminary amendment. All claims are drawn to the same invention claimed in the earlier application(s) and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting Official papers to Technology Center 3700 is (703) 872-9302 and for submitting papers After Final to Technology Center 3700 is (703) 872-9303.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



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Victor K. Hwang
March 9, 2003